

SEX OFFENDER RESIDENCE RESTRICTIONS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gregory H. Hughes

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Code of Criminal Procedure to limit where persons may live if they are sex offenders against children and defines restricted areas and places. This bill also provides residence restrictions regarding minors who are attending school.

Highlighted Provisions:

This bill:

- ▶ requires that persons who are required to register as sex offenders for offenses committed against victims younger than 18 years old may not live within 500 feet of schools or public parks, swimming pools, or playgrounds;
- ▶ also applies the same residence restrictions to any sex offender required to register for a lifetime due to the commission of a second offense;
- ▶ provides specific provisions and exceptions regarding residential restrictions for juvenile offenders who are attending school; and
- ▶ increases the penalties for lewdness offenses committed by a sex offender in a protected place or protected area when the sex offender is present in those locations as allowed by this bill.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

30 **76-9-702**, as last amended by Chapter 325, Laws of Utah 2003

31 **76-9-702.5**, as last amended by Chapter 325, Laws of Utah 2003

32 ENACTS:

33 **77-27-21.7**, Utah Code Annotated 1953



35 *Be it enacted by the Legislature of the state of Utah:*

36 Section 1. Section **76-9-702** is amended to read:

37 **76-9-702. Lewdness -- Sexual battery -- Public urination.**

38 (1) A person is guilty of lewdness if the person under circumstances not amounting to
39 rape, object rape, forcible sodomy, forcible sexual abuse, aggravated sexual assault, or an
40 attempt to commit any of these offenses, performs any of the following acts in a public place or
41 under circumstances which the person should know will likely cause affront or alarm to, on, or
42 in the presence of another who is 14 years of age or older:

- 43 (a) an act of sexual intercourse or sodomy;
- 44 (b) exposes his or her genitals, the female breast below the top of the areola, the
45 buttocks, the anus, or the pubic area;
- 46 (c) masturbates; or
- 47 (d) any other act of lewdness.

48 (2) (a) Lewdness is a class B misdemeanor.

49 (b) (i) Lewdness is a class A misdemeanor if the person is a sex offender as defined in
50 Section 77-27-21.7 and the person commits the offense within a prohibited place or prohibited
51 area as defined in Section 77-27-21.7.

52 (ii) A violation of this Subsection (2)(b) is a separate offense from any other criminal
53 offense the person may commit.

54 (3) A person is guilty of sexual battery if the person under circumstances not
55 amounting to rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy
56 upon a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child,
57 aggravated sexual assault, or an attempt to commit any of these offenses intentionally touches,
58 whether or not through clothing, the anus, buttocks, or any part of the genitals of another

59 person, or the breast of a female, and the actor's conduct is under circumstances the actor
60 knows or should know will likely cause affront or alarm to the person touched.

61 (4) Sexual battery is a class A misdemeanor.

62 (5) A person is guilty of public urination if the person urinates or defecates:

63 (a) in a public place, other than a public rest room; and

64 (b) under circumstances which the person should know will likely cause affront or
65 alarm to another.

66 (6) Public urination is a class C misdemeanor.

67 (7) A woman's breast feeding, including breast feeding in any location where the
68 woman otherwise may rightfully be, does not under any circumstance constitute a lewd or
69 grossly lewd act, irrespective of whether or not the breast is covered during or incidental to
70 feeding.

71 Section 2. Section **76-9-702.5** is amended to read:

72 **76-9-702.5. Lewdness involving a child.**

73 (1) A person is guilty of lewdness involving a child if the person under circumstances
74 not amounting to rape of a child, object rape of a child, sodomy upon a child, sexual abuse of a
75 child, aggravated sexual abuse of a child, or an attempt to commit any of those offenses,
76 intentionally or knowingly does any of the following to, or in the presence of a child who is
77 under 14 years of age:

78 (a) performs an act of sexual intercourse or sodomy;

79 (b) exposes his or her genitals, the female breast below the top of the areola, the
80 buttocks, the anus, or the pubic area:

81 (i) in a public place; or

82 (ii) in a private place:

83 (A) under circumstances the person should know will likely cause affront or alarm; or

84 (B) with the intent to arouse or gratify the sexual desire of the actor or the child;

85 (c) masturbates;

86 (d) under circumstances not amounting to sexual exploitation of a child under Section
87 76-5a-3, causes a child under the age of 14 years to expose his or her genitals, anus, or breast,
88 if female, to the actor, with the intent to arouse or gratify the sexual desire of the actor or the
89 child; or

90 (e) performs any other act of lewdness.

91 (2) (a) Lewdness involving a child is a class A misdemeanor, except under
92 Subsection(2)(b).

93 (b) (i) Lewdness involving a child is a third degree felony if the person is a sex
94 offender as defined in Section 77-27-21.7 and the person commits the offense within a
95 prohibited place or prohibited area as defined in Section 77-27-21.7.

96 (ii) A violation of this Subsection (2)(b) is a separate offense from any other criminal
97 offense the person may commit.

98 Section 3. Section **77-27-21.7** is enacted to read:

99 **77-27-21.7. Restrictions on sex offenders' residence locations.**

100 (1) As used in this section:

101 (a) "Protected area" means:

102 (i) any licensed day care or preschool facility; and

103 (ii) any similar facility as specified by the parole agreement as a protected area.

104 (b) "Protected place" means:

105 (i) any place where persons congregate who represent the sex offender's established
106 victim profile, as determined by the Department of Corrections;

107 (ii) a swimming pool that is open to the public;

108 (iii) a public or private primary or secondary school;

109 (iv) a trade school in which persons younger than 18 years of age enroll;

110 (v) a park that is open to the public; and

111 (vi) a playground, which includes those public areas designed to provide children
112 space, recreational equipment, or other amenities intended to allow children to engage in
113 physical activity.

114 (c) "Reside" means to stay for more than three consecutive nights at any location.

115 (d) "Sex offender" means an adult or juvenile sex offender who is required to register
116 under Subsection 77-27-21.5(10)(a) or (b):

117 (i) due to a conviction for any offense listed under Subsection 77-27-21.5 (1)(f)(i)
118 committed against a person younger than 18 years of age; or

119 (ii) due to any subsequent conviction under Subsection 77-27-21.5(10)(c).

120 (2) (a) (i) A sex offender may not reside on a primary, secondary, or temporary basis

121 within 500 feet of, or on property adjoining, a protected area or any easement to the protected
122 area, whichever distance is greater.

123 (ii) A sex offender may not reside in any location where any outer perimeter of the
124 property where the residence is located is less than 500 feet from any outer perimeter of a
125 protected place.

126 (b) If the property of the protected area or protected place subject to Subsection (2)(a)
127 changes after the sex offender establishes a residence that is in compliance with Subsection
128 (2)(a), the change does not result in a violation of Subsection (2)(a) or this Subsection (2)(b) by
129 the offender.

130 (c) When a change occurs under Subsection (2)(b), the sex offender shall vacate his or
131 her residence within the time requirements of Subsection (4).

132 (3) (a) A sex offender who is aware that his or her primary residence is located within a
133 protected area or protected place shall immediately notify the local law enforcement agency of
134 the location of his or her residence within the protected area or protected place.

135 (b) A sex offender under Subsection (3)(a) shall vacate his or her residence within the
136 time requirements of Subsection (4).

137 (4) (a) A sex offender shall vacate his or her residence that is within a protected area or
138 within a protected place:

139 (i) within 60 days, if the tenancy is month-to-month; and

140 (ii) at the expiration of the current lease, if the sex offender's tenancy is by lease.

141 (b) The sex offender shall report any change of residence made in compliance with the
142 requirements of this Subsection (4) to the parole officer and the local law enforcement agency.

143 (5) A juvenile sex offender may reside or be permitted to be in a protected place while:

144 (a) in compliance with Section 53A-11-101 regarding the requirement that minors
145 attend school;

146 (b) in the custody of the Department of Child and Family Services or the Division of
147 Juvenile Justice Services; or

148 (c) enrolled in a secondary school as a matriculating student, and the juvenile sex
149 offender is required by juvenile court adjudication to register as a sex offender, except as
150 provided under Subsection (6).

151 (6) A juvenile sex offender under Subsection (5) who is emancipated under Title 78,

152 Chapter 3a, Part 10, Emancipation, is not exempt from the residence requirements of
153 Subsection (1) unless the sex offender is enrolled at a secondary school as a matriculating
154 student.

155 (7) It is a class A misdemeanor for any sex offender to be in any protected area or
156 protected place on foot or in or on any vehicle, including vehicles that are not motorized,
157 except for those specific periods of time when the sex offender must be present within a
158 protected place or protected area in order to carry out reasonable responsibilities and activities
159 as a parent or guardian of a child, and the sex offender is not prohibited from being present in
160 the protected place or protected area under a parole agreement or court order.

Legislative Review Note
as of 1-29-07 3:47 PM

Office of Legislative Research and General Counsel

H.B. 375 - Sex Offender Residence Restrictions

Fiscal Note

2007 General Session
State of Utah

State Impact

Enactment of this bill will require additional ongoing appropriations of \$70,800 from the General Fund to the Department of Corrections due to an estimated increase of offenses resulting from provisions in this bill.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>
General Fund	\$0	\$70,800	\$70,800	\$0	\$0	\$0
Total	\$0	\$70,800	\$70,800	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.